INTRODUCTION

Since 1945, a crude amalgamation of transnational regulatory agencies, standard-setting bodies and inter-governmental organisations has wielded considerable influence in shaping the civil, political, social and economic conditions for human beings across the globe. Yet, the project of global governance as articulated by the UN Charter, Bretton Woods institutions, and many other international instruments has struggled to move past its inherently undemocratic character. Democratic states are governed by a legislature, an executive and an independent judiciary, all guided by a constitution that reflects the will of the people. The ‘liberal, international order’, which reflects the post-War aspiration for a “democratic peace” neither has corresponding institutions nor mechanisms that render it accountable to the global public. The lack of direct linkages between the governance structures and the governed resulted in the manipulation of multilateral regimes by powerful interest groups, states and non-state actors. The international order today has incubated an “underclass” of vulnerable communities, including refugees, indigenous populations, agricultural labourers and blue-collar workers -- that Richard Stewart has appropriately termed ‘the disregarded’.

During the past decade, populist leaders have latched onto the outbreak of discontent among the disregarded and jettisoned multilateral, rules-based cooperation for policies favouring protectionism and isolationism. Withdrawal from treaties and processes, rejection of human rights norms and the stonewalling of processes at the international level have cast a grim shadow on the future of multilateralism.

As India takes up its rightful position as a norm entrepreneur in the global order, she must ask herself what sort of an order does she want to shape? A modest derivation of the established order that was driven largely by the super-powers of the time, or a new world order-shaped by the leaders of today? Are there values from the old order that continue to be applicable in today’s day and age? Can International Law be conceptualized as an instrument that accomplishes more than mere virtue-signalling for the elite?

All these are tough questions-questions that budding lawyers from the global South should be equipped to grapple with. This course does not seek to provide any answers -indeed a silver bullet solution might prove to be elusive. Neither does it seek to frame the questions-students are expected to figure this out for themselves. Indeed, the journey to
framing the right questions would mark half the battle won. Instead, we hope to stimulate intellectual thought and provoke discord so that the voices of the hitherto disregarded are never silenced again.

The course starts off by quickly recapping some of the basics of International Law and International Relations. It then moves onto the structure and functioning of existing institutions with a bid to provoke critique of the same. We then look separately at two sides of the global governance architecture—the Bretton Woods driven international economic order and the UN driven human rights regime—both of which are under considerable threat. We then dedicate a unit solely to pontificating on the future of International Law in an era of lucrative deals.

We then zoom in a little bit—looking at India’s role in this cacophony and how we can pave a way forward for ourselves in a manner that serves our national interest and benefits the most vulnerable. In the final unit, we look at technology—which holds the key to international relations for the next century. A new Iron Curtain is rising as a clash of values, interests and institutions are coming to the fore again to determine the future of cyberspace. Lessons from the last seven decades (and the first six units of this course) might have to be unlearned and reformed. Not doing so makes us run the risk of entrenched redundancy.

OTHER DETAILS

1. Class Size: Max 55
2. Appropriate for: 3rd, 4th and 5th year
3. Pre-requisites: None, except for an appetite for reading and writing. (Basic Knowledge of Public International Law and International Relations might help—so the readings in Unit 1 become important)
4. Readings: Illustrative, not exhaustive. I have indexed a list of articles I found useful while researching and learning about these issues. I would argue that doing the readings might help you make informed contributions to the class discussion (particularly those in bold)—but drawing from other sources is always encouraged.
5. Assessment:
   - **Written Essay (1500 words)**—Policy Brief/Blog Post(s) on a topic of your choice to be decided in consultation with me (60%)
   - **2 Response Papers (500 words each)**—To be written in response to any of the ‘prompts’ in units 3-7 (35%) OR Open Book Exam (35%)-To be finalised in consultation with NUJS UGC
   - **Class Participation (5%)**
Unit 1: Laying the groundwork (2 hours)

While much of this course will be spent deconstructing and reconstructing the ‘basics’, laying the ground-work and understanding the basics is a crucial first step before we embark on said reconstructing and deconstructing. If you feel you have a hang of these readings already, feel free to skip but be very, very sure as they are essential to the rest of the course.

BASICS OF PUBLIC INTERNATIONAL LAW
This session will introduce the main foundational elements of public international law, which are essential to understand how international law is created. These are treaties, customary international law and other “sources” of international law. In addition, there will be considerations of soft law and how international law, and our understanding of what is part of the international legal system, develops over time. Depending on the extent of your familiarity with the basics of international law, you should read at least two of the following four readings.


V. Lowe, International Law (OUP, 2007), Chapters 1 and 2; or M. Evans (ed), International Law (4th ed, OUP, 2014)

Chapters 4 and 5; or M. Dixon, R. McCorquodale and S. Williams, Cases and Materials on International Law (OUP, 2011) Chapters 1 and 2


BASICS OF INTERNATIONAL RELATIONS THEORY

Henry Kissinger (2014),” World Order: Reflections on the character of nations and the course of History” Chs 1-3

Anne Marie-Slaughter, “International Relations, Principal Theories”


Mazarr, Heath&Cevallios,”China and the International Order” RAND Corporation, 2018

Edward Said, Orientalism (Vintage Books, 1979) 1-112
Additional Reading:


De-Graaf and Apeldoorn,”US-China relations and the liberal world order: contending elites, colliding visions?” Chatham House, 2018
Unit 2: Understanding the birth, growth and after-life of International Organisations (4 hours)

Prompt: What are international organizations? What are they for? What were the factors leading to their genesis and how does the complex web of these institutions lead to status quo on a legal framework for their governance? What were the original fractures in their creation and how do they continue to plague them today?

Essential reading:


Optional Readings:

Unit 3: The International Economic Order and its discontents (5 hours)

The ‘Bretton Woods’ moment conceived a global economic order based on free and fair trade accompanied by neutral dispute resolution bodies that would guarantee sovereign equality and benefit the most vulnerable. How far has that vision been realised? How has the rise of China augmented/entrenched that vision? How far have institutions been receptive to geo-political flux?

Organisations in the International Economic Order


Challenges to Status Quo


Book Reviews (Read any 2):


Quin Slobodian, Globalists: The End of Empire and the end of Neo-liberalism (Harvard University Press, 2018)

**Modern day Geo-Economics**

**China**


**WTO**

Stewart M. Patrick, “ *Trump’s search for absolute sovereignty could destroy the WTO*” WPR (2019)

Arindrajit Basu, “ *Will the WTO finally tackle the ‘trump card’ of national security?*” (The Wire, May 08, 2019)

Keith Johnson, " *How Trump May Finally Kill the WTO*" (Foreign Policy, Dec 9 2019)

Jennifer Hillman, " *Three Approaches to Fixing the WTO's Appellate Body: The Good, The Bad and The Ugly*” (Institute of International Economic Law, Georgetown)
Henry Farrell and Abraham L. Newman, "Chained to Globalization": Why it's too late to decouple (Foreign Affairs, Jan/Feb 2020)

Branko Milanovic, "The Clash of Capitalisms: The Real Fight for the Global Economy's Future" (Foreign Affairs, Jan/Feb 2020)

Optional Readings:


Ngaire Woods, Governing the Global Economy: Strengthening Multilateral Institutions, 2008


Rainer Hülsse, Even clubs can't do without legitimacy: Why the anti-money laundering blacklist was suspended, 2 Regulation & Governance 459 (2008).
Human rights and democracy started out as talismanic values as the present day liberal international order prospered. Did the original promoters of this order genuinely practice the values they preached or were they mere smoke-screens for realpolitik? Are there alternate conceptions of human rights and governance? How do we make international human rights standards actionable given their essentially unactionable nature?

What are the warning signs for a transition of a society from democracy to ‘democratic authoritarianism’? Is there anything such as democratic ‘authoritarianism’?

International Human Rights Law


Thomas Burgenthal, “A Brief History of Human Rights Law”


Human rights and the realities of global politics

Samuel Moyn, “The parochialism of American cosmopolitanism” Lawfare, Feb 15, 2017

Chase Madar, Samantha Powers and the weaponization of human rights, CounterPunch, Sept 10, 2019


David Rieff, The End of Human Rights, Foreign Policy, Apr 9, 2018


Nanjanya Nyabola, Human Rights after Trump, New Internationalist, Oct 2016, 2018

Daniel Immerwahr, ” A World to Win: Decolonisation and the pursuit of a more egalitarian order,” The Nation, Dec 23, 2019 **

Benjamin Ward, What would a ‘No Deal’ Brexit mean for human rights? Human Rights Watch, Oct 17, 2018

Andrew Gilmour, The Future of Human Rights; A view from the United Nations, Ethics & International Affairs

Samantha Besson (2011) Human rights and democracy in a global context: decoupling and recoupling, Ethics & Global Politics, 4:1, 19-50, DOI: 10.3402/egp.v4i1.6348


Mary Ellen O’ Connell, ” How to Lose the Rule of Law”, Lawfare, July 16, 2019


Human Rights and Development


Cosmopolitanism, Human Rights and Democracy

Yascha Mounk, "How Labour Lost the Culture War" (The Atlantic, Dec 13, 2019)


Yussef Al Tamimi, Human Rights and the Excess of Identity: A Legal and Theoretical Inquiry into the notion of identity in Strasbourg case Law, 2018 Socio-Legal Studies Jun 27(3)

David Runciman, How Democracy Ends (Hachette, 2018) pgs. 165-219


Francis Fukuyama, Identity (Hachette, 2018) Pgs. 3-74

Autocratic Legalism (Any one of two mandatory)


https://www.transnat.org/current (Any 2)
Prompt: How has International Law evolved? How has geo-politics shaped its present state? Are there alternate methods of looking at and tracing its evolution? Is it an equitable construct? Is it a normative construct or a mere tool of ‘politics by other means?’


Elonnai Hickok and Arindrajit Basu, “ *Conceptualizing an International Security Architecture for Cyberspace*” (Briefings of the Research and Advisory Group of the GCSC) [Pages 38-58 only]


Tomer Broude, Behavioral International Law, UPenn Law Review Vol 16:1099


Rafael Domingo, The Crisis of International Law, Vanderbilt Journal of Transnational Law,Vol 42:1543

Damon Linker, International Law won’t save us, The Week, Apr 7,2018


Douglas Guilfoyle, “The Future of International Law in an increasingly authoritarian world” EJIL Talk (June 3 2019)

Charles J Dunlap, “Lawfare”

David J. R. Frakt, Lawfare and Counterlawfare: The Demonization of the Gitmo Bar and Other Legal Strategies in the War on Terror, 43 Case W. Res. J. Int’l L. 335 (2010) Available at: https://scholarlycommons.law.case.edu/jil/vol43/iss1/21


“Transcript: Aung San Suu Kyi’s Speech at the ICJ in Full”
Prompt: What role has India played in the shaping of the multi-lateral global order? Are there specific issue areas it could further engage with? What form could this engagement take? How are changing regional and global dynamics shaping India’s role? How can International Law shape India’s strategy? Has Narendra Modi ushered in a fundamental shift in Indian strategic thinking, and what can we expect from the Modi-Jaishankar combination in the next half decade?

Origins and Progress

Harsh V. Pant, New Directions in India’s Foreign Policy (CUP, 2018)- Chs 2, 3, 7, 8, 9

Arun Sukumar, “How India lost its way in the study and use of International Law” The Wire, 02 Apr, 2018


Thorsten Wojczewski (2017) India's vision of world order: multi-alignment, exceptionalism and peaceful co-existence, Global Affairs, 3:2, 111-123, DOI: 10.1080/23340460.2017.1331512


Geo-Politics and Geo-Economics in a Changing South Asia (CPR Dialogues)


Sandy Gordon, India’s rise as an Asian Power: Nation, Neighbourhood and region (CUP India, 2014) Chs 5 and 6

“India has a unique strategic culture and diplomatic style” (India Writes Network, 2013)

Shyam Saran, How India Sees the World, (Juggernaut, 2017) 63-133, 192-227

Karthik Nacchiapan (2019), Does India Negotiate? (OUP)

Karthik Nachiappan, " The art of walking away from a deal" Livemint, Nov 07 2019
The age of Narendra Modi

Arun Sukumar, “What the Age of Narendra Modi means for Indian Foreign Policy” (The Wire, 05 Jun 2019)


Shyam Saran, How India Sees the World, (Juggernaut, 2017) 63-133, 192-227

S. Jaishankar, External Affairs Minister’s Speech at the 4th Ramnath Goenka Lecture (2019)**


Swarajya Staff, "With Fiery Statements Like 'China Illegally Occupied Indian Territory' Here's New India's Diplomacy Under Jaishankar" Swarajya, Nov 01 2019

Dhruva Jaishankar, "Geopolitics is shifting, India must be prepared" (Hindustan Times, Dec 17, 2019)

Dexter Filkins, "Blood and Soil in Narendra Modi's India" New Yorker, Dec 2, 2019

The Future of No First Use


Christopher Clay & Vipin Narang, "'No first use' nuke policy isn't dead, but losing sanctity" Hindustan Times, Aug 18, 2019

“Should India change its No First Use Nuclear Doctrine”

https://www.orfonline.org/tags/no-first-use/

https://armscontrolcenter.org/issues/no-first-use/

Ankit Panda, 'No First Use' and Nuclear Weapons’ (CFR Backgrounder, July 17, 2018)
Unit 7: Technology and the Future of Global Governance (5 hours)

Prompt: Are we seeing the rise of a new digital ‘Iron Curtain’? To what extent does cyberspace fundamentally change our understanding of global security systems? How has it facilitated the rise of an assortment of non-state actors and how should that cultivate our study of global governance? To what extent do fissures in the geo-economic order spill over into global technological competition? How can technology be harnessed to steer an equitable, stable and peaceful world order?

Cyber Norms Debate

Arindrajit Basu, “The Potential for the Normative Regulation of Cyberspace” (Centre for Internet&Society, Jul 30, 2018)-esp.2-14)

Arindrajit Basu&Elonnai Hickok, “Cyberspace and external affairs: A Memorandum for India” (Centre for Internet&Society).

Finnemore&Hollis, Constructing norms for global cybersecurity, The American Journal of International Law, Vol. 110, No. 3 (July 2016), pp. 425-479


Pukhraj Singh, "Before cyber norms, let's talk about disanalogy and disintermediation" (CIS, 5 November 2019)

Non-State Actors


Arindrajit Basu, “Beyond Twitter and Russia: How do we make social media incorporated work for democracy?” The Wire, 06 Nov, 2017


The geo-politics of emerging technologies


Kadri Kaska, Henrick Beckvard and Tomas Minarik, “Huawei, 5G and China as a National Security Threat” (CCDCOE, Tallin 2019)

[For primer on Huawei debate, see https://www.cnet.com/news/huawei-ban-full-timeline-on-how-and-why-its-phones-are-under-fire/]

Justin Sherman, “Reframing the US-China AI arms race” (New America, 2019)

R. Shashank Reddy, “India and the challenge of autonomous weapons systems” (Carnegie India, June 2016)

Weaponized Interdependence: How Global Economic Networks Shape State Coercion

2019-05. Defending our Data: Huawei, 5G and the Five Eyes Bob Seely MP, Dr Peter Varnish OBE, Dr John Hemmings


The Indian Imperative

Arindrajit Basu, Elonnai Hickok and Aditya Chawla, “The Localisation Gambit: Unpacking policy measures for sovereign control of data in India” (Centre for Internet & Society, March 19th, 2019)


Arindrajit Basu, “India’s Role in Global Cyber Policy Formulation” (Lawfare, Nov 07, 2019)

Justin Sherman and Arindrajit Basu, “Fostering strategic convergence in US-India Tech Relations: %G and Beyond” (The Diplomat, July 03 2019)


Arindrajit Basu, “We need a better AI Vision” (Fountain Ink, 2019)

Munish Sharma (2019), "The Road to 5G: Technology, Politics and Beyond" (IDSA Monograph Series No. 65)

Arun Mohan Sukumar, Midnight’s Machines: A Political History of Technology in India (Penguin, 2019) Pgs. 100-145